85-114

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NO.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

JAMES SHELTON,

Petitioner,

vs.

E.F. WINSOR,
JOHN F. GUDERIAN,
ONE UNKNOWN CUSTOMS AGENT,

Respondents,

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

James Shelton
4733 Village Pl. N.E.
Seattle, Wa. 98105
(206) 525-6200

Counsel Pro Se for
Petitioner

July 12, 1985

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Question Presented

Are "Japs" (Japanese Americans) entitled to provisions of U.S. Customs Petition due process the same as anyone else where Federal courts require Japanese Americans to have super insight, over and above that expected of the average American, in detecting fraudulent government documents where:

(a) Agency repeatedly refused information requests through discovery and freedom of information act.

(b) Petitioner became suspicious and had final petition document examined in 1982.

(c) Petition final document was found by expert document examiner to be forgery.

(d) A second Petition was also not answered.

(e) Position lingers in State courts and Agencys here in Washington State, apparently based on this Courts Korematsu v. U.S., 323 U.S. 214 (1944) decision, that "Japs" are not entitled to due process rights.

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28 U.S.C. 1254(1) 2

The Petitioner, James Shelton and espouse Yoshi Yonekawa Shelton doing business as University Village Music Center, a federally qualified minority business, respectfully prays that a writ of certiorari issue to review the judgment order of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on 1 May 1985. In a case of first impression, the Ninth Circuit affirmed--with opinion that Japs should be able to recognize forgery prior to expert detection-- the District Court's Judgment that matter is dismissed, and summary judgment granted to defendants, i.e. Petitioner is not entitled to seizure hearings.

Opinions Below

The Judgment Order of the Court of Appeals, not recorded, appears in the Appendix hereto. The Judgment of the District Court for the District of Western Washington at Seattle also, appears in the Appendix.

Jurisdiction

The judgment of the Court of Appeals for the Ninth Circuit was entered on May 1, 1985, and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

Constitutional Provisions Involved

United States Constitution Article VI, cl. 2: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; ...shall be the supreme Law of the Land; ..."

Statement of the Case

In a 1943 case this Court in Korematsu v. U.S., 323 U.S. 214, 65 Sup. Ct. 193 (1944) held that 120,000 Japs could be removed from West Coast and placed in consentration camps without trial or due process.

Dissent by Justice Jackson stated: "The Court for all time has validated the principle of racial discrimination...and of transplanting American citizens. The principle then lies around like a loaded weapon ready for the hand of any authority..."

It is the purpose of this writ to report to this Court that the above Jackson statement has come to pass here in Washington State. It is not possible here in Seattle, for "Japs" to get a fair hearing in either State courts or at Federal Agencys, since this Court has ruled that "Japs" are not entitled to due process rights.

Petitioner presented papers and amended papers to Ninth Circuit Court which showed

gross discrimination in Washington State and that this discrimination has filtered into Federal agencys and was causal in federal agents defrauding petitioner of the Customs Petition process. These papers are on file at the Ninth Circuit and state approximately as follows:

The complaint and amendments was brought to save our business from acumulative effect of discriminatory actions by Government powered officers.

In addition to the Federal minority directory the said business was listed as minority business in the Washington State minority directory of 1980 and in fact is the only music store listed in that minority directory.

Dispite some 12 years of continous business and the fact that we were only such business listed in State directory, not one single item has been purchased nor has any bid proposals even been recieved from said

State or state supported agencys.

That Washington State minority directory of 1984 no longer lists our business nor are any other minority music businesses listed in that directory and that State dropped us from the directory without any kind of hearing or notice for the sole purpose of eliminating minority business from public school sales and bids, because we are "Japs".

That State of Washington first began discriminating against said business owners in 1942 when State sent troopers and sheriff to remove from state and incarcerate owner Yoshi Shelton because she was Japanese even though she was only 9 years old at the time and over 200 miles from the Pacific ocean coast. This removal was based on exclusion order 98 which called for removal of Japanese within 100 miles of Pacific coast.

That said owner was allowed to take only what possessions she could carry in her arms and was then held under armed guard in cattle pens at Washington/Oregon border for several months without any kind of hearing or process.

That said owner was subsequently entirely removed from State to a wilderness mountain prison camp and held under armed guard there for several years without any kind of hearing or process or even extradition process and was referred to as a dirty "Jap", with no rights.

This was not the first time that Japanese Americans were discriminated against: Enactment of the Washington State Anti Alien Land Acts of 1921 and 1923, the Federal Immigration Act of 1924, and the prevailing anti-Japanese climate prompted dozens of families-unable to own land-to give up farming and leave state and others moved to cities, unable to farm, and sought

any employment open to them.

AS a result of the aforesaid, Owner was denied inter alia, her freedom, due process rights, habeus corpus, and raised in a concentration camp, grew up in a barracks and prison atmosphere, traumatized by the experience and constantly referred to as a "Jap". How would you like to be treated in this manner?

This State has a long history of anti alien attitudes and laws regarding Japanese, where denying aliens their rights and due process was the norm. In fact this discrimination has grown until today the anti "Jap" discrimination in Washington State is so bad it has grown like a cancer in various state, city, and county and even Federal agencys here in Seattle, as will be shown hereinthroughout.

Our minority business has filed 16 cases with police for stolen and missing music instrument rentals which authorities

totally refuse to take action. One such case involved Internal Revenue Service employee where said employee rented two instruments and then sold same. No action was taken by I.R.S. or local authorities. However, in this instance and another instance we filed Citizens Complaint under Justice Criminal Rules but authorities still refused to handle the matter.

In another case Owners/Petitioners filed a state civil action and was given summary judgment where purchaser tried to return a violin after she had damaged same, only to have the judgment stripped away without due process guaranteed by rules covering vacating proceedure. As a result a complaint was filed and issue was presented to Supreme Court of State of Washington that "ARE MINORITIES ENTITLED TO THE DUE PROCESS PROVISIONS OF VACATING RULES?" This petition was denied, reference:

James Shelton v. State of Washington, et al (7 June 1985 Sup Crt #51613-8) certiorari will be requested in a seperate brief for this companion case.

In the mean time the result of all this is State refuses in criminal cases to protect us and also denies us right to Citizen prosecution and state strips us of our due process rights in civil matters and now, we are denied our right to the Federal Petition process provided by U.S. Customs laws, to adjudicate differences; The circumstances of which are approximately as follows:

A. In a misunderstanding over two guitars Customs referred to our "Jap business" and our store was misteriously subjected to warrentless search and was designated as a Government "hearing site" where we were embarrassed and grilled in front of our customers for no good reason other than our minority status.

B. We petitioned the District Director of

Customs for relief but no proceeding was held but rulings were misteriously pulmagated neverthe less.

C. We appealled rulings to Regional level but we recieved rulings again from the lower district level.

D. A forged final notice was sent to us purporting to come from District Director.

E. During the course of petition agents referred to our "Jap" business and minority status.

As a result of the aforesaid we conclude our minority business was targeted by U.S. Customs where an anti "Jap" discrimination movement thwarted our due process rights to the Petition process. As a result our imports have been at a standstill, thereby damaging our free trade. Not only are we without state process as stated but we are also denied the Federal Petition process provided by Customs laws to adjudicate differences.

REASONS FOR GRANTING THE WRIT

I. The Decision Below Has Decided An Important Question of Federal Law Which Has Not Been, But Should Be, Settled By This Court And Has Decided Such Federal Question In A Way In Conflict With The Applicable Decisions Of This Court.

The decision of the court below, that petitioner is not entitled to hearing prior to loss of property and that we (minority Japanese) should recognize fraudulant documents prior to expert examination, is predicated upon a complete misconception of the basic United States Customs Petition rights and laws which Congress so carefully enacted to offset the awesome powers given to customs agents, i.e. may seize goods, vessels, and search vessels etc. Not even the F.B.I. has such powers absent a court order.

Congress saw the District Director as being far enough removed from scene as to provide function of independant decision maker, or hearing officer.

It is our position that we are entitled to the "independant decision maker" as set forth in statutes for customs petitions, namely the District Director. The named individuals herein sought by deciet and forgery to usurp our right to independant decision maker because we were "Japs". See, Wakinekona v.Olim, 646 F.2d 378 (9th Cir. 1981) for parallel case where use of independant decision maker was by-passed and unauthorized.

The District Director is the only person authorized by law to hear petitions. During the District Court process defendant/ respondents submitted papers acknowledging that they were responsible officers for processing and handling petitions to District Director and admitted that they decided the petition themselves. They made no statement regarding the second petition which was never answered by anyone.

according to the Seattle Times news

paper the Ninth Circuit last year ruled in an unpublished Los Angles case that failing to decide a petition for 18 months was not a violation of due process. However, instant case was several years without answer and Ninth Circuit has again marked this case as an unpublished decision. I therefore conclude that Customs may go for years without answering petitions.

Respondents violation of our Petition process rights where absolutely none of the petition procedure was followed, led ultimately to loss of our property without a hearing.

> Procedural due process requires that parties whose rights are to be affected are entitled to be heard at a meaningful time, Fuentes v. Shevin,(1972) 407 U.S. 67, 92 S.Ct. 1983

See also: there are constitutional limitations on power of courts, even in aid of their own valid process, to dismiss action without affording party opportunity for hearing on merits of his cause. Society Int. Pour Participations v. Rogers, 357 U.S. 197

Opponents violation of the Petition process was clear and unequivocal and deprived us of a hearing on the petition.

> "Violation of a statute or regulation constitutes negligence as a matter of law when violation results in injury to a member of the class of persons intended to be protected by the legislation and when the harm is of the kind which the statute or regulation was intended to prevent." Stachniewecz v. Mar-Cam Corp., (1970) 495 F.2d 436

The Oponents herein deliberately sought to deprive us of our petition rights.

> "No man in this count y is so high that he is above the law. No officer of the law may set that law at defiance with impunity." U.S. v. Claiborne, ___F.2d_____, (9th Cir. 1984)

Violation of our petition rights was an unconscionable act motivated by racial discrimination against this minority small-family business.

The final document denying the Customs petition to District Director was found by expert witness in 1982 to be fraudulant by virtue of the forged signature. This date lies well within the statute of limitations currently espoused as appropriate by Ninth Circuit court. However the Courts have presumed "Japs" apparently have some super ability to detect fraudulant documents that ordinary citizens do not possess.

Since it is the average citizen who is constantly being taken in by forged checks, notes, etc.& since only expert witness can verify whether papers are fraudulant it is unbelievable that courts would take position that "Japs" should have known the document was fraudulant prior to expert examination. This is patently legal discrimination and clearly calls for review by this high Court.

Additionally, Respondents refused to furnish information which would have alerted us to these civil rights violations. We

furnished Ninth Circuit Court with several letters and discovery refusals where we were denied this information.

> Where party acted himself in bad faith there exists estoppel against estoppel, Syms v. McRitchie, 187 F.2d 915 (C.A. Fla.)

No where in this case did parties waive their right to hearing by the duly appointed hearing officer i.e. the District Director of Customs.

The Civil Rights Act was intended to establish paramount importance in our federal scheme of constitutionally protected rights.

II. Millions Of Individuals, Thousands Of Minorties And Hundreds of Customs Petitions Nationwide Are Affected By The Erroneous Statutory Interpretation Of The Courts Below.

The importance of the case at bar is underscored and the logic of granting the writ of certiorari bolstered by the fact that many individuals and businesses are involved or will be affected by the

erroneous statutory interpretation below.

United States Customs takes in millions of dollars in penalities and taxes annually. With this large amount there are bound to be inequities and the petition process must be preserved to treat these cases.

We are a minority business and should have been given preferential treatment if anything. But lets look at history.

Japanese were first run out of this state by enactment of the Washington State Anti Alien Land Acts of 1921 and 1923 when the courts did nothing to protect these minorities.

Later, the State seized upon Exclusion Order 98, which only called for removal within 100 miles of Pacific, to remove <u>all</u> "Japs" from this State, and again the courts did nothing to protect these minorities from these acts of 1942.

Now, officials are again engaged in

running "Japs" out of state or at least out of business, by missuse of the petition proceedure, and again the courts do nothing to stop this abuse of these minorities and the process. Japanese citizens in this state want and deserve fair treatment. A ruling by this Court will assure just treatment of these citizens in the future and restore the petition process as a viable solution to import problems.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

James Shelton
4733 Village Pl. N.E.
Seattle, Wa. 98105
525-6200

Counsel Pro Se for Petitioner

A P P E N D I X

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JAMES SHELTON,

Plaintiff-Appellant

vs

E.F. WINSOR; JOHN F. GUDERIN,
and ONE UNKNOWN CUSTOMS AGENT,

Defendants-Appellees.

CA No. 84-3802
DC No. CV 83-1453R

MEMORANDUM*

Appeal from the United States District Court
for the western District of Washington
Barbara J. Rothstein, District Judge, Presiding
Submitted February 12, 1985**

Before: Barnes, Farris, and Canby, Circuit Judges.

Shelton's classical guitar and case were seized by Customs officers in 1976. Finding that Shelton had imported his guitar by means of false statements, the Customs agents denied Shelton relief. In the United States' forfeiture action against Shelton, United States v. One Classic Guitar and Case, infra, Shelton brought a counterclaim, which was decided against him

on February 22, 1983 by memorandum.

The State of Washington's three-year statute of limitations, R.C.W. 4.16.080(2), applies to this civil rights action. See Rose v. Rinaldi, 654 F.2d 546, 547 (9th Cir. 1981). The allegedly unconstitutional acts occurred during the summer of 1976. Shelton filed this action in 1983. His action is time-barred.

We understand but reject Shelton's argument that the limitation statute was tolled until 1982. The forged letter was in Shelton's possession since 1976. "There is no proof the (appellees) deliberately

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* The panel has concluded that the issues presented by this appeal do not meet the standards set by Rule 21 of the Rules of this Court for disposition by written opinion. Accordingly, it is ordered that disposition be by memorandum, forgoing publication in the Federal Reporter, and that this memorandum may not be cited to or by the courts of this circuit save as provided in Rule 21(c).

** The panel unanimously agrees that this case is appropriate for submission without oral argument. Fed.R. App. P. 34(a).

concealed any information that would estop them from asserting the defense of the statute of limitations." Woodsv. Gibbons, 38 Wash. App. 343, 685 P.2d 619,621(1984).

Further, Shelton's § 1983 and § 1985 actions fail because they are based on alleged due process violations that have already been decided in the Government's favor. United States v. One Classical Guitar and CAse, Mem. No. 82-3124 (9th cir. Feb. 22, 1983), cert. denied, 103 S.Ct. 3541 (1983). Because Shelton's due diligence could have discovered the alleged forgery even before he brought his claim in 1976, see Kentucky Fried Chicken Corp. v. Diversified Packaging Corp.,549 F.2d 368, 391 (5th Cir. 1977), and because Shelton could have raised the newly discovered evidence prior to disposition of that case on appeal, See Fed.R.Civ. P. 60(b), the earlier decision has res judicata effect. Allen v. McCurry, 449

U.S. 90, 94 (1980); see also Booz v. Secretary of Health and Human Services, 734 F.2d 1378, 1381 (9th Cir. 1984) (newly discovered evidence will only overturn a judgment if it would have affected the trial result).

The judgment is affirmed.

(stamped)

NOT FOR PUBLICATION

FILED 1 May 1985

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JAMES SHELTON,

Plaintiff,

vs

E.F. WINSOR, et al,

Defendants.

C83-1453R

JUDGMENT

This action came on for consideration before the Court, United States District Judge Barbara J. Rothstein Presiding. The issues having been duly considered and a dicision having been duly rendered, it is Ordered and Adjudged that the defendants' motion for summary judgment is hereby granted. Plaintiff takes nothing and the action is dismissed.

Filed and Entered 30 March 1984